

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against AMADU EDWARD SWARAY,  
a Minnesota Attorney,  
Registration No. 0306654.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on November 16, 2000. Respondent currently practices law in Brooklyn Center, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

In considering whether public discipline is warranted it is appropriate, pursuant to Rule 19(b)(4), RLPR, to consider respondent's prior discipline. Respondent's history of prior discipline, including admonitions, is as follows:

A. On July 10, 2006, respondent was issued an admonition for failing to timely file an appeal with the Board of Immigration Appeals, in violation of Rule 1.3, Minnesota Rules of Professional Conduct (MRPC).

## FIRST COUNT

### Trust Account Matter

1. On April 26, 2013, respondent's TCF Bank trust account xxxxxx0089 ("trust account") became overdrawn. Pursuant to Rule 1.15(j) to (o), MRPC, the bank reported the overdraft to the Director.
2. On May 7, 2013, the Director wrote to respondent to request an explanation for, and various trust account books and records related to, the overdraft. The information and documents respondent thereafter provided revealed that (a) the overdraft was caused by a client's negotiation of a trust account check one day prior to respondent's deposit of the underlying funds; (b) respondent was maintaining a substantial balance of his own funds, and commingling those funds with client funds, in his trust account; and (c) respondent was not maintaining his trust account books and records in accordance with Rule 1.15, MRPC, as interpreted by Appendix 1 thereto. Accordingly, on November 26, 2013, the Director converted the trust account overdraft inquiry into a formal disciplinary investigation.
3. The Director thereafter performed an audit of respondent's trust account for the period March 2011 through June 2014. The audit revealed the deficiencies described below.
4. During the periods March 24, 2011, to April 25, 2013, and April 29 to December 16, 2013, respondent maintained an excessive balance of his own funds, and commingled those funds with client funds, in his trust account. This commingled balance ranged in amount from \$300 to \$7,470. Respondent explained that he maintained this commingled balance because of the nature of his then trust account and its minimum balance requirements.
5. On December 16, 2013, respondent closed his TCF Bank trust account xxxxxx0089 and opened TCF Bank trust account no. xxxxxx0065. As of December 16,

2013, respondent was to be holding \$1,453.56 in client funds in his trust account. When respondent opened his new trust account, however, he deposited only \$1,000 into the account, resulting in a \$453.56 shortage, i.e., an account balance that was insufficient to cover aggregate client balances. A \$232.50 unattributed disbursement to respondent on December 23, 2013, and a \$7.95 check printing charge on January 3, 2014, increased the shortage to \$694.31. That shortage remained in respondent's trust account until January 21, 2015, when he deposited funds to eliminate it.

6. On occasion, respondent issued trust account checks directly to his own business or personal creditors. For example, on March 20, 2012, respondent's trust account check no. 3059, payable to "[Unintelligible] Tax Solutions" and in the amount of \$550, cleared respondent's trust account. Respondent included his check on his firm funds subsidiary ledger, indicating that it was in payment of his own business or personal expense.

7. During the period from at least March 2011 to at least June 2014, respondent's failure to maintain his trust account books and records in the manner required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto. In particular, respondent failed to maintain accurate client subsidiary ledgers, trial balances or reconciliation reports which resulted in shortages in the account.

8. Respondent's conduct violated Rule 1.15(a), (b), (c)(3) and (h), MRPC, as interpreted by Appendix 1 thereto.

## SECOND COUNT

### Mungai Matter

9. In 2008, Simon W. Mungai (Mungai), a citizen of Kenya, entered the United States under an F-1 Student Visa to attend college in Marshall, Minnesota. Mr. Mungai initially attended college from August 2008 to December 2009, during which time his education was sponsored by a cousin.

10. On February 11, 2010, after learning that family members could no longer sponsor his education, Mr. Mungai completed an I-9 Form in conjunction with his attempt to gain employment and raise money for school. Mr. Mungai represented on the I-9 Form that he was a United States citizen, which was not true.

11. On May 19, 2010, Mr. Mungai was arrested, detained and placed in removal proceedings for false representation of citizenship and related charges. On May 27, 2010, Mr. Mungai's brother retained respondent to represent Mr. Mungai at his bond hearing. Pursuant to the terms of the retainer agreement, the representation terminated when Mr. Mungai was placed under bond and released from detention.

12. Following his release from detention, Mr. Mungai met with respondent to discuss further representation with regard to his immigration proceedings, which included a Notice to Appear on January 25, 2011, to show cause why he should not be deported from the United States. Respondent agreed to undertake the representation for \$4,000, which he stated would cover the matter through the final hearing, excluding appeals. Mr. Mungai paid an initial retainer fee of \$2,000 during the meeting, followed by monthly payments. Respondent stated they would go to court, but did not discuss with Mr. Mungai the charges pending against him.

13. Respondent contacted Mr. Mungai a few days prior to the January 25, 2011, hearing, to remind him of the hearing date. Respondent did not discuss with Mr. Mungai the charges pending against him or what would take place during the hearing.

14. On January 25, 2011, respondent and Mr. Mungai appeared in Immigration Court for a hearing to show cause why Mr. Mungai should not be deported. The hearing was continued to April 21, 2011, and respondent was ordered to file written pleadings and applications for relief 10 days prior to the hearing. The Immigration Court noted that respondent was required to file all forms of relief 10 days

prior to the hearing or they would be deemed abandoned. Respondent acknowledged his understanding of the Immigration Court's order.

15. Respondent failed to file written pleadings and applications for relief 10 days prior to the April 21, 2011, hearing, as ordered by the Immigration Court.

16. In March of 2011, respondent and Mr. Mungai discussed Mr. Mungai's pending marriage to a United States citizen. Respondent advised Mr. Mungai on the marriage process and informed him that once he was married he could apply for relief and adjust his status. Respondent did not discuss with Mr. Mungai the charges that would be addressed during the April 21, 2011, hearing, nor did he communicate to Mr. Mungai the options or ramifications of conceding to the allegations and charges against him.

17. On April 21, 2011, immediately prior to the Immigration Court hearing, respondent met with Mr. Mungai. They discussed Form I-130 (Petition for Alien Relative). Respondent did not discuss with Mr. Mungai the charges that would be addressed during the hearing, inform him that he would have to enter a plea, or communicate to him the options or ramifications of conceding to the allegations and charges against him.

18. On April 21, 2011, respondent and Mr. Mungai appeared in Immigration Court for the continued hearing. During the course of the hearing, respondent, on Mr. Mungai's behalf, admitted and conceded to all of the allegations and charges contained in the Notice to Appear, including the charge relating to allegation 7 – that on February 11, 2010, Mr. Mungai made a false claim of U.S. citizenship.

19. During the April 21, 2011, hearing, respondent informed the Immigration Court that he had filed Form I-130 and that Mr. Mungai would be seeking an adjustment of status based on his marriage to a U.S. citizen. The Immigration Court informed respondent that Mr. Mungai would be unable to adjust his status because

there is no waiver available for a false claim to U.S. citizenship, which Mr. Mungai had conceded to via the plea entered by respondent.

20. The April 21, 2011, hearing was continued to June 14, 2011. Respondent was informed that the purpose of the continued hearing was two-fold: (1) respondent was to be prepared to inform the Immigration Court whether Mr. Mungai would be seeking master calendar hearing voluntary departure, final hearing voluntary departure, or a removal calendar; and (2) respondent was to research and address the waiver issue.

21. Respondent waived hearing the INA § 240B advisals at the conclusion of the April 21, 2011, hearing.<sup>1</sup>

22. Respondent then did not communicate with Mr. Mungai until a few days prior to the June 14, 2011, hearing, when he contacted Mr. Mungai by phone to remind him of the hearing date. Respondent did not discuss with Mr. Mungai what would take place during the hearing or what method of removal Mr. Mungai wished to seek.

23. On June 14, 2011, respondent and Mr. Mungai appeared in Immigration Court for the continued hearing. Respondent failed to follow the Immigration Court's directive that he: (1) be prepared to inform the Immigration Court whether Mr. Mungai would be seeking master calendar hearing voluntary departure, final hearing voluntary departure, or a removal calendar; and (2) research the waiver issue. The Immigration Court also noted respondent's failure to prepare the form required with regard to Mr. Mungai's change of address.

24. During the June 14, 2011, hearing, respondent attempted to withdraw Mr. Mungai's previous admission to the allegation and charge of false claim to U.S. citizenship, based on a conversation he had with Mr. Mungai following the April 21, 2011, hearing.

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<sup>1</sup> INA § 240B advisals relate to the voluntary departure of aliens from the United States.

25. The Immigration Court denied respondent's withdrawal request and noted his previous failure to file written pleadings with the Immigration Court as ordered, and his failure to speak with Mr. Mungai prior to entering the previous plea on his behalf. The Immigration Court stated, "... previously at the January 25, 2011, hearing, I had requested written pleadings 10 days beforehand. There were no written pleadings." The Immigration Court further stated, "you're supposed to talk to your client before court, and you said you waived a reading, you know, of the rights and everything else, and we took the pleadings," and, "Well it's also ... having a respondent have adequate representation. And so if you aren't ready to plead something, then you don't plead to it, and you need to be ready to plead."

26. Respondent was granted a recess to discuss with Mr. Mungai what type of removal/departure he wished to request. Respondent did not discuss with Mr. Mungai his appeal rights as they related to each of the removal/departure options. Following the recess, respondent informed the Immigration Court that Mr. Mungai was seeking a final order of removal.

27. On June 14, 2011, the Immigration Court ordered Mr. Mungai removed from the United States. An appeal deadline of July 14, 2011, was set. Respondent prepared and filed the appeal. By order dated August 30, 2012, Mr. Mungai's appeal was denied, based in part on respondent's failure to include a claim of ineffective assistance of counsel in the appeal.

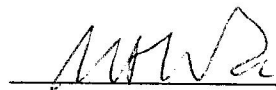
28. Mr. Mungai subsequently retained new counsel. His immigration case was reopened in response to his motion asserting ineffective assistance of counsel and he was given a hearing date before the Executive Office for Immigration Review. The matter is scheduled to be heard on April 20, 2016.

29. Respondent's conduct in failing to adequately communicate with Mr. Mungai regarding court proceedings, the charges against him, options available to him, and the ramifications of his decisions, violated Rule 1.4, MRPC.

30. Respondent's conduct in failing to follow Immigration Court orders and directives violated Rule 8.4(d), MRPC.

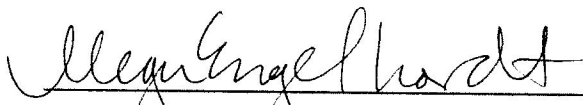
WHEREFORE, the Director respectfully prays for an order of this Court reprimanding respondent and placing him on probation or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: June 16, 2015.



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